

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of

Application by SBC Communications Inc.,  
Southwestern Bell Telephone Company, and  
Southwestern Bell Communications Services,  
Inc. d/b/a Southwestern Bell Long Distance for  
Provision of In-Region, InterLATA Services in  
Texas

CC Docket No. \_\_\_\_\_

To: The Commission

**BRIEF IN SUPPORT OF APPLICATION BY SOUTHWESTERN BELL  
FOR PROVISION OF IN-REGION, INTERLATA SERVICES IN TEXAS**

Pursuant to section 271(d)(1) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, Pub. L. No. 104-104, § 151(a), 110 Stat. 89 ("1996 Act" or "Act"), SBC Communications Inc. ("SBC") and its subsidiaries Southwestern Bell Telephone Company ("SWBT") and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance ("SBCS") – collectively, "Southwestern Bell" – seek authority to provide in-region, interLATA services (including services treated as such under 47 U.S.C. § 271(j)) in the State of Texas.<sup>1</sup>

This filing represents not the beginning of Southwestern Bell's effort to obtain interLATA authority in Texas, but the beginning of the end of that process. It follows years of work by SWBT to replace systems and operating procedures that had been designed for a

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<sup>1</sup> Southwestern Bell will soon file with the Commission an application for authorization under 47 U.S.C. § 214 to provide international services originating in Texas.

franchised monopoly environment with systems and procedures that serve CLECs and their customers on a nondiscriminatory basis. As Chairman Pat Wood of the Texas PUC said when voting to support this Application, SWBT “has undergone a profound cultural change to become an active wholesaler, just as they are an active retailer in this state, and I’m proud of [SWBT’s] efforts.” Dec. 16, 1999 Open Meeting Tr. at 68-69 (App. C-1, Tab 212).

For example, SWBT spent three years and \$45 million to provide CLECs the same ability to interconnect with and use SWBT’s order-processing systems as SWBT’s own retail operations have. Ham Aff. ¶ 18 (App. A, Part A-4, Tab 1); see Part II.B, infra. SWBT negotiated collaborative procedures that allow CLECs to participate in developing new OSS interfaces, and to determine through a group vote whether the new systems should be introduced. See Part II.B, infra. SWBT expanded its service center that handles CLEC ordering, billing, and collections from 17 employees in 1995 to over 600 employees with a budget of \$29 million in 1999, and built a new, \$5 million facility to house the center’s operations. Conway Aff. ¶ 13 (App. A, Part A-4, Tab 3); see Part II.B, infra. SWBT developed training curricula, handbooks, help centers, and web sites that instruct CLECs on making the most efficient use of SWBT’s wholesale offerings. See Ham Aff. ¶¶ 362-374; Auinbauh Aff. ¶¶ 154-173 (App. A, Part A-3, Tab 1); Brainard Aff. (App. A, Part A-4, Tab 2) SWBT reconfigured its central offices to provide CLECs the maximum space to collocate their own equipment. See Auinbauh Aff. ¶ 73. SWBT installed new software to track the local calls of different carriers as they travel SWBT’s network, so that the CLECs can bill their own local customers however they see fit. See Locus Aff. ¶¶ 10-11 (App. A, Part A-4, Tab 4); Auinbauh Aff. ¶¶ 107-109. SWBT redesigned its network to give CLECs exactly the same access to signaling and call-related databases as SWBT itself has. See Part V.J, infra. SWBT deployed systems that allow its operators to provide

service in the name of the end user's chosen carrier. See Part V.G, infra. And SWBT implemented one of the most complex and costly projects in the history of the telecommunications industry – enabling customers that leave SWBT for a CLEC to take their existing telephone numbers with them. See Part V.K, infra.

SWBT's massive efforts have been matched by the work of the Texas PUC. Indeed, the Texas PUC's consideration of this application meets all four criteria for authoritativeness listed in this Commission's New York Order. Memorandum Opinion and Order, Application by Bell Atlantic-New York for Authorization Under Section 271 of the Communications Act to Provide In-Region InterLATA Services in the State of New York, CC Docket No. 99-295, FCC 99-404 (rel. Dec. 22, 1999) ("New York Order"). As described throughout this application, the state proceedings included:

- extensive third-party testing of SWBT's systems, processes, and procedures;
- technical conferences in which the Texas PUC staff, SWBT, and CLECs jointly resolved difficult implementation issues;
- development of comprehensive performance monitoring and enforcement mechanisms; and
- participation by all interested parties and the development of a massive record relating to section 271, which spans over 110,000 pages and is reproduced in Appendices C, C-1, D, and E of this application.

See New York Order ¶ 20.

Since passage of the 1996 Act, the Texas PUC has scrutinized, debated, and resolved every issue even arguably relevant to facilitating local competition in Texas. The state commission's intense and continuous review began in late 1996, when the Texas PUC consolidated arbitrations involving several of the largest CLECs – including AT&T, MFS Communications (now part of MCI WorldCom), and Sprint – into a single "Mega-Arbitration"

proceeding. The Mega-Arbitration comprehensively addressed, over the course of nearly one and a half years, pricing of facilities and services and a myriad of interconnection, unbundling, and resale issues. See Shelley Aff. ¶¶ 11-16 (App. A, Part A-3, Tab 3). To give only one example, the Texas PUC's September 30, 1997 Award in this arbitration contained three appendices resolving hundreds of issues raised by AT&T or MCI or pertaining to collocation. See App. F, Tab 15. Other awards, reproduced in Appendix F of this Application, were similarly comprehensive, such that the Texas PUC's orders together established a complete set of rates, terms, and conditions governing network interconnection and access. The Mega-Arbitration also served as a forum for SWBT to negotiate with CLECs and the Texas PUC, and subsequently DOJ, the framework for SWBT's comprehensive performance monitoring program. See Dysart Aff. ¶¶ 21-22 (App. A, Part A-5, Tab 1).

On March 2, 1998, based on the Texas PUC's resolution of all disputed issues in the Mega-Arbitration, SWBT provided the Texas PUC and CLECs more than 7,000 pages of evidence addressing SWBT's compliance with the competitive checklist and all other requirements of section 271. See Shelley Aff. ¶¶ 21; SWBT's Notice of Intent To File Section 271 Application for InterLATA Authority in Texas (Tex. PUC filed Mar. 2, 1998) (App. C, Tab 169). Following comments on SWBT's submission by all interested parties, reply briefing, a week of hearings, and post-hearing submissions, see App. C, Tabs 458-827, the Texas PUC determined that SWBT had "done much in Texas to open the local market to competition," but had fully satisfied only 2 of the 14 checklist items (items (ix) and (x)). Order No. 25 Adopting Staff Recommendations; Directing Staff to Establish Collaborative Process, Investigation of Southwestern Bell Telephone Company's Entry Into the Texas InterLATA Telecommunications Market, Project No. 16251, Attach. 1 at 2, 8-9 (App. C, Tab 847). The Texas PUC adopted 130

specific recommendations – covering every aspect of this Commission’s section 271 analysis – “in an effort to provide SWBT with guidance on what the [Texas] Commission believes SWBT will need to do in order for [the Federal Communications] Commission to say that the local market is irreversibly open and SWBT should be allowed to provide in-region interLATA service.” Id. at 2. The state commission further directed its staff to establish a collaborative process to involve CLECs in resolving this long list of issues. App. C-1, Tab 853, at 1. “The successful conclusion of the collaborative process,” the Texas PUC explained, “would allow the [Texas] Commission to reach a positive recommendation to the FCC on SWBT’s application.” Id.

During the ensuing collaborative process, SWBT made hundreds of changes to the company’s policies and procedures to accommodate requests by its CLEC customers and the recommendations of the Texas PUC and its staff. Over the course of nearly six months, SWBT addressed each and every one of the 130 issues that had been identified by the Texas PUC. Where CLECs, other participants, or the Texas PUC raised new issues, SWBT satisfied these concerns as well. SWBT employees participated in dozens of workshop and follow-up sessions that often went through the night, devoting thousands of hours to providing testimony and fulfilling requests for follow-up information. Shelley Aff. ¶¶ 26-29.

In May 1999, SWBT incorporated the results of the collaborative process, as well as holdings of prior Texas PUC, FCC, and judicial decisions, into a model interconnection agreement. Proposed Interconnection Agreement, Project No. 16251 (Tex. PUC filed May 13, 1999) (“Texas 271 Agreement”) (App. C, Tab 1533). After receiving comments from interested parties and incorporating changes recommended by the Texas PUC commissioners and staff, SWBT submitted its final “Texas 271 Agreement” to the Texas PUC, which approved the

agreement on October 13, 1999. Auinbauh Aff. ¶ 4; Shelley Aff. ¶¶ 30-47; Order No. 55 Approving the Texas 271 Agreement, Project No. 16251 (Tex. PUC Oct. 13, 1999) (App. C, Tab 1828). SWBT thereupon made the agreement available to all interested carriers in Texas, with a minimum initial term that runs until October 13, 2000. Should this Commission approve the instant application for interLATA authority, however, the term of SWBT's standard agreement will extend automatically for three additional years, until October 13, 2003. Shelley Aff. ¶ 53; see also Texas 271 Agreement § 4.1.

Based on the Texas 271 Agreement, and after a final round of investigations to address new issues raised during the fall of 1999, the Texas PUC, on December 16, 1999, "sa[id] a unanimous and unqualified yes to support [SWBT's] application." Dec. 16, 1999 Open Meeting Tr. at 74 (statement of Comm'r Walsh). This Commission thus benefits from a highly reliable determination, by the expert state agency closest to the facts, that "the Texas local market is open to competition;" "that competitors have a meaningful opportunity to compete in that market;" and that competitors are seizing this opportunity by serving at least one million local lines in Texas. Id. at 67-68 (statement of Chairman Wood).

To date, 35 CLECs have entered into effective interconnection agreements based on the Texas 271 Agreement. See App. B, Tabs 69-78, 81-82, 84-100, 103-105, 109-111 (agreement signature pages). Other CLECs can opt into those approved contracts under 47 U.S.C. § 252(i). Any CLEC may opt into the model agreement under the Texas PUC's automatic approval procedure. See Auinbauh Aff. ¶¶ 37-38.

The terms offered in the Texas 271 Agreement and SWBT's other agreements with CLECs plainly allow the CLECs to be effective competitors. By Southwestern Bell's best estimate, competitors in Texas now have won more than 1.4 million access lines in SWBT's

Texas service areas, which amounts to approximately 12 percent of all business and residential lines in those service areas. See Habeeb Aff. Table 2 & Attach. E (App. A, Part A-1, Tab 1). As Figure 1 and Attachment 1 to this Brief show, CLECs are using all modes of entry. For example, CLECs serve well over half of their customers' lines – including more than 925,000 business lines and more than 73,000 residential lines – on a facilities basis. Id. Tables 1, 2. As Texas PUC Chairman Pat Wood has put it, such numbers “scream and shout” that SWBT has delivered on its promises. Dec. 16, 1999 Open Meeting Tr. at 68.

**FIGURE 1: CLEC ACTIVITY IN TEXAS**

FACILITIES-BASED					RESALE		CLEC Orders Processed by SWBT
Network Miles	Interconnection Trunks	Unbundled Loops	E911 Listings	Ported Numbers	Business Lines	Residential Lines	
4,221	347,830	166,267	285,657	448,220	150,847	171,304	3.7 million

*Source: Habeeb Aff. ¶ 5 & Table 5, Attach. E.*

Part I of this Brief details the CLECs' provision of local services in Texas, and Southwestern Bell's resulting satisfaction of the first statutory requirement for section 271 relief under Track A – the presence of predominantly facilities-based competitors in the local business and residential markets. See 47 U.S.C. § 271(c)(1)(A), (d)(3)(A).

After this empirical proof of open local markets, Part II of this Brief offers qualitative proof, by addressing aspects of local telecommunications competition that have been of greatest concern to this Commission, state commissions, legislators, and the CLECs themselves. Part II describes SWBT's industry-leading performance monitoring program; SWBT's development and testing of systems that provide CLECs the requisite nondiscriminatory access to OSS, plus additional options for access to accommodate particular CLECs' business plans; SWBT's offers to provide unbundled network elements (“UNEs”) on a pre-combined basis, even where the UNEs are not already combined in SWBT's network; SWBT's provisioning of unbundled local loops for use in CLECs' advanced services; and the assurances that SWBT will not “backslide”

after receiving section 271 relief. Some may wish to read Part II in conjunction with Part V, which provides a “nuts and bolts” discussion of SWBT’s checklist compliance.

Part III of this Brief demonstrates that approving Southwestern Bell’s application would serve the public interest, convenience, and necessity, in satisfaction of 47 U.S.C. § 271(d)(3)(C). Indeed, approval of this application is not merely consistent with the public interest; freeing Southwestern Bell from statutory entry barriers is necessary to bring Texas consumers the full benefits of both local and long distance competition.

Part IV confirms that Southwestern Bell will abide by the structural and non-structural safeguards of section 272, as well as the Commission’s implementing regulations, when it provides interLATA services in Texas. See 47 U.S.C. § 271(d)(3)(B).

Finally, Part V consists of a detailed showing of SWBT’s compliance with the specific requirements of the competitive checklist, as established by the 1996 Act and amplified by the New York Order and the Commission’s other implementing decisions. Because it describes the specific terms and conditions of SWBT’s contracts with its CLEC customers, as well as technical features of SWBT’s network, Part V may not be of interest to all readers. But those interested in confirming that Texas CLECs have access to everything they reasonably might need to compete, will find the confirmation here and in the affidavits supporting this Application.<sup>2</sup>

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<sup>2</sup> The Anti-Drug Abuse Act certifications required under 47 C.F.R. § 1.2002 are provided in Attachment 3 to this Brief. Southwestern Bell has, in addition, complied with the Commission’s pre-filing consultation requirements through the Texas PUC’s collaborative process, as described above. Southwestern Bell has consistently attempted in those proceedings, in its interconnection negotiations, and elsewhere, to resolve disputed issues pertaining to the competitive checklist and other relevant matters.



## DISCUSSION

### I. SOUTHWESTERN BELL IS ELIGIBLE TO SEEK INTERLATA RELIEF UNDER SECTION 271(c)(1)(A)

Southwestern Bell easily satisfies Track A in Texas: a number of its competitors are providing services either exclusively or predominantly over their own facilities, to both residential and business subscribers. See 47 U.S.C. § 271 (c)(1)(A).

SWBT has signed 237 interconnection and/or resale agreements with CLECs in Texas. Habeeb Aff. ¶ 8.<sup>3</sup> SWBT has lost more than 1.4 million customer lines to unaffiliated carriers in Texas, and about two-thirds of those lines have been lost to facilities-based carriers. Habeeb Aff. Attach. E. CLECs serve 23 percent of all business lines in Texas, mostly over their own facilities. Id. CLECs' share of the business market is 26 percent in Dallas/Ft. Worth and Houston, and 28 to 30 percent in Austin, Corpus Christi, and San Antonio. Id. ¶ 38. CLECs likewise have captured about a quarter of a million residential lines from SWBT in Texas, of which at least 73,000 are served over the CLECs' own facilities. Id. Table 1. In all, CLECs serve 12 percent of the access lines in SWBT's Texas service areas. Id. Table 2. Clearly, CLECs are providing Texans "an actual commercial alternative."<sup>4</sup>

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<sup>3</sup> These agreements, with their dates of approval, are listed in the Affidavit of John Habeeb, Attachment B. Interconnection agreements are reproduced in Appendix B of this Application. The status of federal court challenges to SWBT's agreements is given in Attachment 4 to this Brief.

<sup>4</sup> Memorandum Opinion and Order, Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Michigan, 12 FCC Rcd 20543, 20585, ¶ 77 (1997) ("Michigan Order"). While many facilities-based carriers in Texas have large numbers of subscribers, there is no statutory requirement that a qualifying CLEC under section 271(c)(1)(A) serve any particular quantity of customers. See id. at 20584-85, ¶¶ 76-77. Congress rejected metric tests of actual competition in favor of a clear statutory "test of when markets are open." 141 Cong. Rec. S8188, S8195 (daily ed. June 13, 1995) (statement of Sen. Pressler).

A number of carriers in Texas compete with SWBT by serving both business and residential customers entirely on a facilities basis, without any reliance on resale of SWBT's services, or by supplementing their primarily facilities-based service with some resold lines.

Southwestern Bell believes these carriers to include:

- Allegiance Telecom, which offers facilities-based service primarily to businesses in Dallas/Fort Worth and Houston, and serves residential customers via resale. See Habeeb Aff. ¶¶ 46-47, 102, 113 & Tables 3, 4, 9, 14-19, 26.
- AT&T, which until recently was primarily a resale-based carrier, has begun converting many of its resale customers to UNE-based service. Throughout Texas, AT&T serves large numbers of business and residential customers on a facilities basis, and thousands more residential customers through resale. See id. ¶¶ 48-50, 113 & Tables 3, 4, 9, 11, 13, 14-20, 22-23, 25-26.
- CoServ, which provides business and residential telecommunications services as well as other utility services. Id. ¶ 68 & Tables 3, 4, 9, 14, 16, 26.
- ETS (formerly Kingsgate), which owns fiber/coaxial networks in Houston that enable it to package cable television, security-system monitoring, and long distance with local telephone services. ETS serves residential and business customers over these networks. See id. ¶¶ 69, 113 & Tables 3, 4, 17, 19.
- Golden Harbor Telecom, which serves residential and business customers almost exclusively over its own facilities in Austin, Corpus Christi, Dallas/Ft. Worth, El Paso, Houston, San Antonio, and a number of smaller cities and towns in Texas. See id. ¶ 70 & Tables 3, 4, 9, 11, 13, 14, 16, 17, 19, 20, 22, 23, 25, 26.
- GST Telecom, a provider of local and long-distance voice and data services, which began providing local telephone service in Houston during the first quarter of 1998 and also has facilities in Austin and Dallas/Ft. Worth. See id. ¶¶ 71, 113 & Tables 3, 4, 17-19.
- ICG ChoiceCom, which uses fiber networks to provide packages of local, long distance, and data transport services and is providing switch-based service in Austin, Corpus Christi, Dallas/Ft. Worth, Houston, and San Antonio. See id. ¶¶ 53-55, 88, 102, 113, 122, 133 & Tables 3, 4, 9, 11-17, 19-25.
- KMC Telecom, which serves thousands of business customers and hundreds of residential customers over its own facilities, supplemented by hundreds more via resale. Id. ¶¶ 56-57, 133 & Tables 3, 4, 9, 23-26.

- Time Warner, which offers overwhelmingly facilities-based services to medium and large-sized business customers in Austin, Houston, and San Antonio and resells SWBT's service to a far lower number of residential customers. See id. ¶¶ 65-67, 88, 102, 113 & Tables 3, 4, 9, 12-14, 16-22, 26

Additional CLECs individually and/or collectively qualify as Track A providers under the standards developed in prior Commission decisions.<sup>5</sup> As the Affidavit of John Habeeb shows, these qualifying carriers include IWL Connect, Millennium, and Westel, which provide facilities-based business service and some business resale service in Austin, Dallas/Fort Worth, and Houston, as well as a small amount of residential service. See Habeeb Aff. ¶ 78 & Tables 3, 4, 9, 11, 13, 14, 16, 17, 19, 23, 25, 26. The Track A carriers additionally include the combination of facilities-based business carriers Austin Bestline, Birch Telecom, Dobson Fiber, e.spire, Frontier, Intermedia, Level 3, Logix, MCI WorldCom, Network Intelligence, NEXTLINK, Sage Telecom, Shell, Taylor Communications, Teligent, U.S. Long Distance, and/or WinStar Communications, which serve businesses overwhelmingly on a facilities basis, with OpTel (Texas) Telecom, Inc., and Telephone Plus, which are facilities-based providers of residential service in Austin, Dallas/Ft. Worth, and Houston. Id. ¶ 102, 113, 122, 133 & Tables 3, 4, 9, 11-26.

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<sup>5</sup> See Michigan Order, 12 FCC Rcd at 20587-88, ¶ 82 ("when a BOC relies upon more than one competing provider to satisfy section 271(c)(1)(A), each such carrier need not provide service to both residential and business customers"); Memorandum Opinion and Order, Application of BellSouth Corp., BellSouth Telecomm., Inc. and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Servs. in Louisiana, 13 FCC Rcd 20599, 20635, ¶ 48 (1998) ("Second Louisiana Order"), ("if all other requirements of section 271 have been satisfied, it does not appear to be consistent with congressional intent to exclude a BOC from the in-region, interLATA market solely because the competitors' service to residential customers is wholly through resale").

## **II. SWBT HAS OPENED LOCAL MARKETS IRREVERSIBLY**

When voting to support this Application, Texas PUC Commissioner Brett Perlman commended SWBT for its “A-plus performance” in addressing the issues that had been raised over the last two years by the Texas PUC and CLECs in Texas. Dec. 16, 1999 Open Meeting Tr. at 63. Although SWBT’s efforts included resolving the smallest technical details about particular facilities and services – as Part V of this Brief shows – they were focused primarily on addressing those issues that CLECs and regulators have identified as being of the greatest importance to healthy, sustainable local competition. As a result of the Texas PUC’s collaborative process, each of these critical issues has been resolved in a way that meets all regulatory requirements and, just as important, ensures the irreversible openness of local markets in Texas.

Moreover, each has been resolved in a manner that satisfies, or exceeds, the requirements of this Commission’s New York Order. In areas such as performance monitoring, OSS, and access to facilities for advanced services, Southwestern Bell has clearly and verifiably gone beyond the standards set by Bell Atlantic in New York. If the New York Order is a roadmap to section 271 relief, then Southwestern Bell has arrived in Texas.

### **A. Southwestern Bell Has Established the Most Comprehensive Performance Monitoring, Performance Reporting, and Performance Payments Program in the Industry**

In the New York Order, this Commission “strongly encourage[d]” state commissions to establish collaborative processes for developing performance measures and standards, and indicated it would rely heavily on the results of such processes. New York Order ¶¶ 53-60. Anticipating that call, the Texas PUC developed and approved, in consultation with CLECs and federal regulators, a set of 131 performance measurement categories that allow CLECs and

regulators to confirm that SWBT is providing local facilities and services on a nondiscriminatory basis. See generally Dysart Aff. The Texas PUC likewise anticipated the Commission's emphasis on strong performance enforcement mechanisms, by establishing two different categories of payments for sub-standard performance – one involving liquidated damages payments to CLECs, and the other payments directly to the Texas State Treasury – with all payments calibrated to reflect the importance of the measure to local competitors and local competition. SWBT, moreover, voluntarily agreed to raise its total potential liability under the performance plan to between \$225 million and \$289 million per year, in order to match or exceed, as a percentage of net revenues, the maximum payments to which Bell Atlantic may be subject in New York. Dysart Aff. ¶ 52. SWBT also agreed in connection with the SBC/Ameritech merger to make performance payments that could reach more than one billion dollars, thus providing another overwhelming financial incentive to furnish facilities and services on a nondiscriminatory basis.<sup>6</sup>

Performance Measurements. SWBT's current and future provisioning of local facilities and services in Texas are subject to the most comprehensive performance reporting program in the industry. Development of this program began in 1997 with parallel negotiations between Southwestern Bell and DOJ, on the one hand, and between SWBT and participants in the Texas PUC's Mega-Arbitration, on the other. See Dysart Aff. ¶ 21. As part of the Mega-Arbitration, the Texas PUC mediated three months of discussions, involving carriers such as AT&T and MCI, that produced a performance measurements appendix for inclusion in SWBT's arbitrated

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<sup>6</sup> Memorandum Opinion and Order, Applications of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, for Consent to Transfer Control, CC Docket No. 98-141, FCC 99-279, ¶¶ 377-380 (rel. Oct. 8, 1999) ("SBC/Ameritech Merger Order").

interconnection agreements. See id. ¶¶ 21-23; SWBT/AT&T Agreement Attach. 17 (App. B, Tab 76). This negotiated plan became the basis for a set of 66 performance measurements that DOJ stated “would be sufficient, if properly implemented, to satisfy the Department’s need for performance measurements for evaluating a Section 271 application filed in the not-too-distant future.” See Dysart Aff. ¶ 22 & Attachs. E (DOJ Measures) & F (DOJ Letter).

Not content with the CLECs’ negotiated provisions or the DOJ-approved performance plan, however, the Texas PUC identified 33 additional performance measurement issues for consideration in connection with SWBT’s proposed section 271 application. Id. ¶ 23. During 1998 and 1999, the Texas PUC nearly doubled the number of measurement categories in SWBT’s plan, so that SWBT is now required to provide monthly performance reports in 131 categories and 1874 subcategories. Id. ¶¶ 16, 24, 59.

SWBT’s performance reports address pre-ordering, ordering, provisioning, maintenance and repair, and billing of UNEs and resold services; interconnection and collocation; directory assistance and operator services; 911 services; interim and long-term number portability; directory assistance database; access to poles, ducts, conduits, and rights of way; loading and testing of NXX codes; and fulfillment of Special Requests for new UNEs or interconnection arrangements. Id. ¶ 13. SWBT currently is collecting data for 115 of the 131 measurement categories; the remaining measures are being implemented as ordered by the Texas PUC. Id. ¶ 60.

Data are collected in accordance with detailed business rules approved for each measure by the Texas PUC, and are disaggregated on a product-specific and/or geographic basis in accordance with the applicable business rules. See id. ¶ 59 & Attach. B. As a result of this product and geographic disaggregation, which was urged by CLECs, SWBT’s monthly

performance report for October 1999 comprised 1874 separate submeasurements. By way of comparison, this is about three times as many submeasurements as were reported in Bell Atlantic's FCC-approved plan for New York. Joint Declaration of George S. Dowell and Julie A. Canny, Attach. B, App. N, Application by Bell Atlantic-New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York, CC Docket No. 99-295 (FCC filed Sept. 29, 1999); see New York Order ¶¶ 54-59, 429 (approving and relying upon New York plan).

Wherever possible, SWBT's performance measurements compare service on behalf of CLECs directly to the level of service in SWBT's retail operations. Where no comparable retail function exists, the level of service provided to CLECs is tested against benchmarks that were approved by the Texas PUC in its collaborative process. See Texas 271 Agreement § 46 & Attach. 17; Dysart Aff. Attach. B. In cooperation with various CLECs, SWBT also has developed, and the Texas PUC has approved, statistical tests to evaluate the significance of apparent differences in performance. Dysart Aff. ¶ 8. The z-test and 95 percent confidence level established by the Texas PUC meet the guidelines set out in Appendix B of this Commission's New York Order. Id. ¶¶ 11, 36-44. The Texas 271 Agreement also provides that SWBT, CLECs, and the Texas PUC will jointly review SWBT's performance measurements and the associated parity and benchmark standards every six months for possible modifications, with the first review to occur in April 2000. Id. ¶ 45; Texas 271 Agreement Attach. 17, § 6.4.

SWBT reports its performance monthly, by geographic area (e.g., the Dallas/Ft. Worth, Houston, South Texas, and Central/West Texas market areas) where appropriate, using defined service and facility categories. Dysart Aff. ¶ 59. Some measures, such as some OSS measures, are reported at a company-wide level to reflect SWBT's centralized provisioning. Id. The Texas

PUC has classified most measures as “Tier 1” (the measure tracks a function that affects end users) and/or “Tier 2” (the measure tracks a function that affects local competition). Some measures that reflect performance already fully captured by the Tier 1 and Tier 2 measures, are classified as “diagnostic.” Id. ¶ 26.

SWBT makes its performance data available to CLECs, the Texas PUC, and this Commission through an Internet website that includes individual CLECs’ data (which is not available to other CLECs), aggregated data for all Texas CLECs, and SWBT’s retail data. Id. ¶ 61. CLECs wishing to receive performance measurement reports do not need to have specific provisions covering this reporting in their existing interconnection agreements; they may obtain the reports on an interim basis prior to amending their agreements. Id. ¶ 62. SWBT provided October 1999 performance measurement reports to 30 Texas CLECs. Id. ¶ 61.

Data Verification and Independent Testing. As recommended by the New York Order (at ¶ 442), the Texas PUC has validated SWBT’s performance data to ensure its accuracy. Validated data includes the results for August, September, and October 1999 provided in Mr. Dysart’s affidavit. Dysart Aff. ¶ 79. Preliminary data for November 1999 have not yet been validated by the Texas PUC; to the extent the Commission may wish to consider this data, however, a summary of preliminary results is provided as Attachment R to the Dysart Affidavit.

At the direction of the Texas PUC, Telcordia conducted an independent, third-party test of SWBT’s data collection methods and procedures, and found them sufficient. See Telcordia Technologies, The Public Utility Commission of Texas; Tests of Southwestern Bell Operations Support Systems 145-162 (Ham Aff. Attach. A) (“Telcordia Final Report”); Dec. 16, 1999 Open Meeting Tr. at 43-47. Telcordia confirmed that SWBT properly implemented the Texas PUC’s business rules for each performance measure; validated the numerical results reported by SWBT



for March through June 1999; verified that SWBT is reporting its results in accordance with the Texas PUC's requirements; and made recommendations for improving SWBT's processes and procedures. See Dysart Aff. ¶¶ 65-76.

Telcordia found that out of 1,617 performance reports, there was only one calculation error that affected the results. Id. ¶ 70. This is a reliability rate of better than 99.9 percent. As for suggested improvements, Telcordia recommended additional mechanization and documentation of the performance measurement processes. SWBT promptly implemented these improvements, and has completed those steps that affect Telcordia's approval of SWBT's current processes. See id. ¶ 71. At its December 16, 1999 Open Meeting, the Texas PUC received a final status report from Telcordia, at which Telcordia provided the results of a follow-up examination conducted in the preceding weeks. Telcordia and the Texas PUC staff reported that SWBT had implemented or was implementing five additional Telcordia recommendations relating to data control and auditability, thus closing this issue. Dec. 16, 1999 Open Meeting Tr. at 43-47; see Dysart Aff. ¶ 72.

Performance Results. The Texas PUC relied heavily on SWBT's performance measures and performance reports in making its determination of nondiscriminatory performance and an open local market. Likewise, this Commission has before it all the data necessary to confirm SWBT's satisfaction of every checklist requirement. Although SWBT cannot claim perfection in its provision of facilities and services for Texas CLECs, perfection is not required. New York Order ¶ 176; Second Louisiana Order, 13 FCC Rcd at 20638, ¶ 57. Rather, SWBT has established a record of consistent performance that satisfies all checklist and public interest requirements, as the Texas PUC has held by unanimously endorsing Southwestern Bell's application. For example, in each of the last three months for which validated data are available

(August through October 1999), SWBT met the Texas PUC's parity or benchmark standard for approximately 92 percent of submeasures for which there were sufficient monthly data to make an assessment. See Dysart Aff. Attach. B (performance results); see also id. ¶ 79. For each of the functions covered by these performance measures, the Texas PUC-backed performance results should – as explained in the New York Order ¶¶ 56-58 – end the Commission's inquiry. For other performance measures, SWBT has investigated and taken appropriate steps to address the causes of any performance deficiencies, as Mr. Dysart explains, measure by measure.

Yet SWBT's performance is even better than such summary numbers suggest. "Hit" or "miss" calculations do not take account of the amount by which SWBT surpassed or missed the relevant parity or benchmark level of performance. Because SWBT often exceeds performance standards by a wide margin while performance "misses" are typically by much smaller amounts, the hit/miss approach understates SWBT's performance.

Consider Performance Measurement 43-01, for example. This measure reports the average installation interval for voice-grade private lines. See Dysart Aff. Attach. A at 58 (business rules). SWBT has met the parity standard for each of the last three months in each of the four Texas market areas. See id. Attach. B (monthly performance data). But there is more to the story. From August to October in the four Texas market areas, SWBT completed voice-grade private line installations for CLECs between 2 and 7 business days faster than for SWBT's own retail operations, on average. CLECs thus are consistently receiving, not parity service, as the hit/miss approach suggests, but better than parity service.

For the month of October, SWBT exceeded parity or the benchmark by 5 percent or more for approximately 170 of the 566 Tier 1 and Tier 2 measures that SWBT satisfied (or 30 percent), and for about 135 of the 361 Tier 2, competition-affecting measures (or 37 percent).

See id. Attach. G. These instances of significantly superior performance outnumber, by nearly three to one, the instances in which SWBT missed parity or the benchmark by any amount. Id. This overall competitive benefit to CLECs goes unrecognized in hit/miss analysis, as well as in the Texas PUC's performance plan.

The hit/miss approach also does not capture relationships between individual measures. Where SWBT has missed a measure, it often has met a related measure that examines the very same underlying data from a different perspective. For October alone, there were at least nine instances in which a SWBT miss under one performance measure was matched by parity or benchmark performance under a related measure that uses exactly the same underlying data. Id. ¶¶ 80-81. Similarly, where related measures use different data to assess the same performance, SWBT sometimes was in compliance under one measure but not the other. In all, for 17 of the 79 Tier 1 and Tier 2 performance measures that SWBT failed to meet in October (i.e., 22 percent of all the missed measures), SWBT was providing the same service at a parity or benchmark level, according to other data.

Finally, the performance data must be viewed in light of statistical limitations. For instance, where a given measure assesses parity between performance for CLECs and SWBT's retail performance, the very large sample sizes on the retail side and relatively smaller samples on the CLEC side can produce highly skewed statistical results. In a number of cases SWBT has fallen short of a Texas PUC parity standard, even though it is providing CLECs the required level of quality or timeliness 98 or 99 percent of the time. See id. ¶¶ 199, 201, 202, 251, 324, 349, 395, 397, 514. From a practical perspective, such extremely small deviations from perfection do not affect CLECs' ability to compete.

Statistical tests also cannot capture all the causes of a performance deficiency, which may include the actions or inaction of CLECs themselves. See id. ¶¶ 249, 258 (providing examples).

Performance Payments. SWBT has also agreed to make self-executing performance payments in the event its performance does not meet the Texas PUC's standards. The Texas PUC adopted a self-executing, two-tiered payment plan, consisting of liquidated damages paid directly to individual CLECs for Tier 1 measures and payments to the Texas State Treasury for sub-standard performance in serving all CLECs in the aggregate, as gauged by the Tier 2 measures. Id. ¶¶ 25-26, 46, 47. The Texas PUC set payments at differing amounts per occurrence and per measurement, based on the severity of the performance lapse and the number of months for which the lapse persists. See Dysart Aff. Attach. H ¶ 46. SWBT, however, has agreed to additional Tier 2 payments which triple the Texas PUC-prescribed payments for measures addressing low-volume, nascent services that are of particular concern to this Commission. Id. ¶¶ 48-50; Texas 271 Agreement Attach. 17 § 14.5 (App. C, Tab 2034). Likewise, SWBT voluntarily increased its payment obligations with respect to specific measures (including measures relating to xDSL-capable loops and interconnection trunks, for example) to address concerns about future performance that were raised by Texas PUC Commissioner Judy Walsh and the Texas PUC staff during November and December 1999. Dysart Aff. ¶ 54. These obligations provide extra assurance that SWBT will have strong financial incentives to meet the Texas PUC's performance standards.

Pursuant to its determination of an appropriate balance between deterrence and compensation, on the one hand, and equity and fair competition, on the other, the Texas PUC capped SWBT's Tier 1 and Tier 2 payments at \$120 million per year. This amount represents

substantially more than SWBT's projected 1999 wholesale revenue, id. ¶ 51, and thus provided SWBT with ample motivation to provide CLECs nondiscriminatory service.

Nevertheless, to address concerns raised by this Commission, SWBT has bound itself to make payments under a much higher cap of up to \$289 million per year. This cap is the same, as a percentage of net revenues, as the maximum level of payments the New York PSC required of Bell Atlantic and this Commission found sufficient. Id. ¶ 52; see New York Order ¶ 436 & n.1332.

In addition to this comprehensive performance monitoring regime developed and overseen by the Texas PUC, Southwestern Bell has implemented a second performance plan developed by this Commission during its review of the SBC/Ameritech merger. SBC/Ameritech Merger Order ¶¶ 377-380. Under the federal performance requirements, SBC/Ameritech must achieve stated goals in 20 areas of performance related to the advancement of local competition in each of its 13 states, or else pay up to \$1.125 billion to the United States Treasury over three years. Id. ¶ 378. Much as they have been increased under SWBT's voluntary modifications to the Texas plan, payments for measures representing "low-volume, nascent services" are tripled above the Texas PUC-prescribed levels. Id. n.706. As this Commission has held, the availability of this additional performance plan provides Southwestern Bell "a heightened incentive . . . not to discriminate," affords CLECs additional confidence in entering Southwestern Bell's markets, and "'create[s] a direct economic incentive for [Southwestern Bell] to cure performance problems quickly.'" Id. ¶ 432 (quoting NorthPoint). As with the Texas plan, moreover, Southwestern Bell's federal performance measurements are subject to semi-annual FCC review. See id. ¶ 377.

These provisions establish SWBT's satisfaction of all requirements for an effective performance remedy plan. See New York Order ¶¶ 433-442. SWBT's plan "provides a meaningful and significant incentive to comply with the designated performance standards." Id. ¶ 433. It contains clearly stated, comprehensive measures and standards that are designed to detect and sanction deficient performance. Its payment provisions are self-executing, without any opportunities for appeal that would meaningfully affect SWBT's incentives to comply. See Dysart Aff. ¶ 53; Texas 271 Agreement Attach. 17, § 7. Finally, as a result of Telcordia's testing and the Texas PUC's validation of data, CLECs and regulators have strong assurance that SWBT's performance reports are accurate.

**B. SWBT Offers CLECs the Widest, Best, and Most Proven Choice of OSS Interfaces in the Industry**

SWBT's performance reporting and performance payment obligations ensure, among many other things, that CLECs have, and will continue to have, nondiscriminatory access to SWBT's OSS. Such access allows new entrants to obtain interconnection, UNEs, and resold services from SWBT, to place maintenance and repair requests with SWBT, and to bill their customers – all with a level of timeliness and accuracy that allows an efficient carrier to compete against SWBT. SWBT provides nondiscriminatory access, and then some. As Part V.B of this Brief explains in technical detail, CLECs can place orders with SWBT through the most advanced OSS interfaces in the industry, with a wider range of options than the 1996 Act or Commission rules require.

Electronic Systems. Over the course of several decades, incumbent LECs have developed some of the most sophisticated, yet reliable, computerized systems in the world to serve their customers. SWBT has been a leader in this innovation. For example, EASE, one of SWBT's pre-ordering/ordering interfaces, won CIO Magazine's Enterprise Value Award in 1997

for “operational and technical excellence,” and was nominated for a Smithsonian Innovation Award. Ham Aff. ¶ 56. As advanced as these systems have become, however, almost all of them were designed to operate in the franchised monopoly environment that prevailed before 1996. With passage of the 1996 Act, SWBT therefore faced an unprecedented challenge: adapting its systems so that they serve other local carriers, as well as end user customers, on an equal basis, without sacrificing any of the capabilities that benefit SWBT’s retail customers.

In response to this challenge, SWBT undertook a thorough program to provide CLECs nondiscriminatory access to its \$2 billion investment in OSS. Id. ¶ 18. SWBT has developed a battery of electronic systems dedicated exclusively to processing wholesale customers’ local service transactions, while also providing CLECs direct access to the principal electronic systems used to process SWBT’s retail transactions. See generally id. Not content to provide the bare minimum level of access required by federal law, SWBT (working closely with the Texas PUC) has spent \$45 million to develop, test, and implement a range of systems – described in detail in Part V.B – that fit CLECs’ varying service requirements and varying levels of technical sophistication. See id. As a result of these efforts, SWBT’s systems for providing CLECs access to OSS are recognized as among the best in the industry, if not the best.

SWBT’s performance data confirm this fact. SWBT has consistently met the 99.5 percent benchmark for OSS availability over the past 3 months. Dysart Aff. ¶ 112. CLECs’ service representatives obtain responses to their pre-order queries within exactly the same, or substantially the same, time intervals as SWBT retail representatives. Id. ¶¶ 94-101; see generally New York Order ¶¶ 146-147 (finding differences of 4 to 6 seconds in pre-order response times to be insignificant). CLECs’ electronic orders and service requests flow through SWBT’s systems without manual intervention about 85 to 99 percent of the time, depending

upon the order type and the interface used. Ham Aff. ¶¶ 82-83, 125-136; Dysart Aff. ¶¶ 164-167. Typically, these flow-through rates are significantly better than the flow-through rates experienced by SWBT's retail operations. Dysart Aff. ¶¶ 165, 167 & Attach. B. Indeed, CLECs that enter their data accurately and completely have a proven ability to achieve flow-through rates as high as 100 percent. Ham Aff. ¶ 128. CLECs also receive timely notifications of the status of their transactions, well within the short intervals set by the Texas PUC. Id. ¶¶ 105-107; Dysart Aff. ¶¶ 136-149.

If a CLEC's customer experiences service problems, the CLEC can obtain the same maintenance and repair functions in the same manner and with the same speed as SWBT. Ham Aff. ¶¶ 217-233; Dysart Aff. ¶¶ 405-503. Likewise, CLECs obtain usage data and other billing information quickly, via their choice of medium, and with the same accuracy as is achieved for SWBT's retail bills. Ham Aff. ¶¶ 234-247; Locus Aff.; Dysart Aff. ¶¶ 504-524.

CLECs are confirming the quality of SWBT's systems and procedures every day, through their business decisions. Notwithstanding the costs of installing electronic systems and training personnel to use them, CLECs are steadily abandoning cheaper manual processes and now deliver approximately 60 percent of their orders for Texas to SWBT using electronic interfaces. Conway Aff. ¶ 36.

Organizations Dedicated to Serving CLECs. SWBT's electronic systems are complemented by new organizations and procedures developed specifically to serve CLECs. SWBT has established and continuously improved its Information Services ("IS") Call Center, which is available 24 hours per day, seven days per week to assist CLECs that have questions or problems regarding electronic access to OSS functions. Ham Aff. ¶¶ 20-28. On-line assistance



is available through Southwestern Bell's secure Internet site, located at <<https://clec.sbc.com>>.

Id. ¶ 18; see also Auinbauh Aff. ¶¶ 171-173.

Even before passage of the Act, SWBT established a Local Service Center ("LSC") to provide CLECs a single point of contact for issues regarding ordering and billing of UNEs. Ham Aff. ¶ 19; Conway Aff. ¶¶ 5, 12. With a 1999 budget of \$29 million, the LSC executes complex transactions that are performed manually for both SWBT retail customers and CLECs, as well as other transactions for CLECs that prefer to use manual processes. Conway Aff. ¶¶ 5, 34, 38. The LSC's staff of nearly 600 employees is sufficient to meet all reasonably foreseeable CLEC demand, as Telcordia found after its independent, third-party review. Id. ¶¶ 5, 9, 25, 105-110. Since passage of the 1996 Act, the LSC has processed 4.7 million orders for CLECs, about half of which have been for service in Texas. Id. ¶ 5, 33, 36.

LSC Service representatives undergo three months of training to develop their skills in processing CLEC transactions. Id. ¶¶ 6, 25. The LSC monitors CLEC transactions on a daily and weekly basis; this information, along with historical trends, time and motion studies, internal forecasts, and referencing benchmarks, is used to ensure that the LSC always has sufficient staffing. Id. ¶¶ 6, 104. To make the LSC as useful as possible for CLECs, SWBT trains its carrier/customers on the LSC's procedures, and also engages in ongoing consultation with CLECs regarding operational practices and service issues. Id. ¶¶ 6, 114-117.

SWBT's Local Operations Center ("LOC") supports the provisioning of UNEs, interconnection with SWBT's local network, and resold services other than "plain old telephone

service” (“POTS”),<sup>7</sup> as well as any maintenance and repair functions requested by CLECs. Conway Aff. ¶¶ 7, 15. The LOC, which has 148 employees and an annual budget of \$7.6 million, serves CLECs 24 hours a day, seven days a week. Id. ¶¶ 15-17. To facilitate CLECs’ use of this center, the LOC provides individual orientation sessions, which involve detailed instruction regarding the LOC’s work processes, as well as SWBT’s business rules for coordinated cutovers, escalation processes, and disaster recovery. Id. ¶¶ 117-121. SWBT tracks incoming trouble volumes on an hourly basis; SWBT uses this information, together with modeling, internal forecasts, historical data, and work time studies, to ensure that the LOC is always adequately staffed. Id. ¶ 107. The LOC has provisioned well over a million CLEC orders, maintenance reports, and cutover requests since 1996. See id. ¶ 70.

SWBT has developed, at its own expense, extensive training for CLEC employees. Ham Aff. ¶¶ 362-374; Auinbauh Aff. ¶¶ 154-170. SWBT offers classes on using its electronic OSS interfaces, Ham Aff. ¶¶ 369-374; Auinbauh Aff. ¶ 154, as well as a free workshop that covers both manual and electronic ordering processes, Ham Aff. ¶¶ 370-371; Auinbauh Aff. ¶ 155. At present, SWBT offers CLECs 14 different workshops and 11 OSS classes, for a total of 40 class days of available training. Ham Aff. ¶ 370; Auinbauh Aff. ¶ 155. In Texas, 78 different CLECs have sent 865 employees to SWBT’s training courses. Ham Aff. ¶ 372. Virtually every one (99 percent) of the hundreds of CLEC employees that have received training, indicated satisfaction with the training they received. Id. ¶ 372.

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<sup>7</sup> Orders for resold POTS are processed through electronic systems in the same manner as SWBT’s retail POTS orders. These orders do not generally go through the LOC. However, at the CLEC’s request, SWBT’s LOC will assist CLECs in the provisioning of resold POTS. Conway Aff. ¶ 53.

These measures to facilitate OSS access illustrate SWBT's overall commitment to meeting the needs of its CLEC customers. This commitment includes all aspects of SWBT's relationship with wholesale customers, from contract negotiation, to implementation of agreements, to ongoing support. Brainard Aff. ¶¶ 4-5. SWBT assigns each CLEC an account manager, who is responsible for assisting the CLEC with all activities related to the CLEC's entry into the local market and, more generally, meeting the CLEC's needs. Id. ¶ 6. In order to help ensure that account managers are fulfilling their responsibilities toward CLEC customers, SWBT developed an Account Manager Satisfaction Survey that it requests CLECs to complete. Id. ¶¶ 8-9 & Attachs. B-E.

Independent Third-Party Testing. Texas CLECs have proven the real-world capabilities of SWBT's systems, processes, and procedures by sending 3.7 million electronic and manual service orders. Habeeb Aff. Attach. E; Conway Aff. ¶¶ 5, 33, 36. In addition, however, SWBT's systems were subjected to months of functional and capacity testing by an independent third party supervised by the Texas PUC. The third-party reviewer found, and the Texas PUC agreed, that SWBT's systems currently process CLEC transactions in a nondiscriminatory fashion, and can do so at reasonably foreseeable levels of demand. SWBT thus has satisfied another key element of this Commission's New York Order. See New York Order ¶¶ 96-100.

After reviewing test proposals from five different potential evaluators, the Texas PUC selected Telcordia (formerly Bellcore) to oversee a carrier-to-carrier test of SWBT's systems. Id. ¶ 251. As Telcordia itself has explained to this Commission, Telcordia is completely

independent from Southwestern Bell and was retained solely by the Texas PUC.<sup>8</sup> Telcordia arrived at its testing methodology through lengthy consultation with interested CLECs (such as AT&T, MCI WorldCom, Allegiance Telecom, and Covad), SWBT, and the Texas PUC staff. Ham Aff. ¶ 251. The Texas PUC reviewed and approved the methodologies and processes used in the testing. Id.

Telcordia evaluated SWBT's OSS interfaces and systems through a series of tests that assessed their functional availability for pre-ordering, ordering, provisioning, maintenance and repair, and billing. Telcordia's investigation addressed the availability, accuracy, and completeness of the information CLECs would need to utilize SWBT's interfaces for these functions, as well as the ability of the interfaces to process pre-order and order transactions at commercial volumes. Id. ¶¶ 267-287. To ensure that the tests would be as realistic as possible, the testing used real end users and actual production interfaces of SWBT and participating CLECs (where the CLECs had built systems). Id. ¶ 255. In this regard, Telcordia's test provided more reliable results than those obtained in the highly regarded testing of Bell Atlantic's systems in New York, because Bell Atlantic's testers were concededly unable to duplicate an actual competitor's relationship with Bell Atlantic. See New York Order ¶ 135 ("KPMG acknowledges that at times it received better treatment from Bell Atlantic than that of an ordinary carrier"). Due to the fact that Bell Atlantic-New York was not yet processing commercial volumes of transactions over a number of its OSS interfaces, testing of those interfaces was required. In Texas, commercial usage was present on all of SWBT's electronic

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<sup>8</sup> See Ex Parte Letter from Louise L. M. Tucker, Senior Counsel, Telcordia Technologies, to Magalie Roman Salas, Secretary, Federal Communications Commission, at 2 (FCC filed Aug. 18, 1999) (App. H, Tab 2).

interfaces except – at the time of the testing – the EDI Gateway. Accordingly, Telcordia only needed to test the EDI Gateway’s ability to handle reasonably foreseeable volumes of commercial orders and DataGate’s and Verigate’s abilities to handle pre-ordering transaction volumes. Ham Aff. ¶ 259. The testing of these interfaces included comprehensive testing of the associated systems and processes common to all of SWBT’s interfaces. Id. ¶¶ 121-123, 267-287. A detailed comparison of the Texas and New York OSS tests is provided in paragraphs 251 through 266 of the Affidavit of Elizabeth Ham. This comparison reflects that the Texas test was at least equal to the New York test in its scope, intensity, and reliability.

Telcordia’s testing had two central aspects. First, the Functionality Test evaluated each interface’s end-to-end processes, starting with order initiation (pre-ordering) and proceeding through to provisioning, billing, and maintenance and repair. Id. ¶ 267. All functionality testing was performed using SWBT’s production OSS systems and processes. In this test, Telcordia evaluated SWBT’s performance in pre-ordering, ordering, and provisioning for unbundled loops, unbundled switch ports, pre-combined UNE Platforms, and resold services, as well as E911-related functions, ordering facilities to provide advanced services, directory listings, and the performance of the LSC. Id. ¶¶ 267-287.

Second, Telcordia’s Capacity Test evaluated the ability of SWBT’s interfaces, systems, and processes to perform at forecasted usage volumes for the first quarter of 2000. Id. ¶ 288. The Texas PUC gathered its forecasted volumes from the participating CLECs themselves – and

then increased them – ensuring that the forecasted volumes would represent “reasonably foreseeable [commercial] demand.”<sup>9</sup> See Second Louisiana Order, 13 FCC Rcd at 20689, ¶ 139.

Like KPMG in New York, Telcordia used a military-style, test-until-you-pass, approach. Ham Aff. ¶ 254; see New York Order ¶ 98. The Telcordia Final Report specifically describes the retesting activities that occurred in the rare instances where particular testing activities failed to achieve the expected result. Ham Aff. ¶ 254; Telcordia Final Report at 4, 13-20. Telcordia also ensured that its test was blind to the greatest extent possible. Ham Aff. ¶ 252; Telcordia Final Report at 16; see generally New York Order ¶ 99.

Based upon the data gathered through this testing, Telcordia concluded that for each of the tested functions and transactions, SWBT’s systems provide CLECs in Texas a meaningful opportunity to compete at both current and projected usage levels. Specifically, Telcordia found that SWBT already has the capacity to process volumes 25 percent above the CLEC-forecasted volumes for the first quarter of 2000, and has sufficient procedures in place to augment capacity as demand increases. Telcordia Final Report at 8. This includes augmenting service center staff to meet demand, as well as contingency plans to accommodate unexpected, short-term “spikes” in demand. Id. Moreover, Telcordia noted that SWBT can process orders properly and deliver the ordered services or service changes, provide accurate bills, and process requests for maintenance and repair. Id. As discussed above, Telcordia also validated SWBT’s methods and procedures for collecting performance data, and the accuracy and completeness of SWBT’s data

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<sup>9</sup> Actual CLEC demand during 1999 has been well below the demand projected by the CLECs in their reports to the Texas PUC. For this reason, Telcordia’s capacity tests had a built-in “safety factor.” Ham Aff. ¶ 255. Moreover, Telcordia multiplied the CLECs’ forecasts by 1.25 to account for the possibility that some CLECs may not have reported total demand for all five SWBT states that use common OSS. See Telcordia Final Report at 104.

for a three-month sample period. Id. at 141-158; Ham Aff. ¶ 301. The Texas PUC adopted Telcordia's findings of nondiscriminatory performance and closed its OSS test on November 4, 1999. Nov. 4, 1999 Open Meeting Tr. at 11 (App. C-1, Tab 210).

Change Control. SWBT offers CLECs an unparalleled opportunity to participate in the development of the systems they use. Like SWBT's retail systems, SWBT's systems for wholesale customers are constantly evolving and improving. Accordingly, SWBT has established a change management process to ensure coordination with CLEC users as SWBT introduces new versions of its interfaces and updates its systems. Ham Aff. ¶¶ 302-354. This process satisfies another important prerequisite for interLATA relief suggested by the New York Order. See New York Order ¶¶ 101-125.

Since passage of the 1996 Act, SWBT has worked cooperatively with CLECs to negotiate system features and standards where industry standards are not yet in place. See Ham Aff. ¶ 306. The record of the Texas PUC's proceedings to establish and review SWBT's Change Management Process (Project No. 20400) is provided in Appendix E of this Application. This cooperation was formalized in June 1998 when SWBT, in advance of industry guidelines, developed a change management process for EDI in collaboration with AT&T and MCI WorldCom. Id. ¶ 307. Subsequently, the Texas PUC supervised collaborative development of a revised and comprehensive Interface Change Management Process ("CMP"). This CMP, which also reflects recommendations made by Telcordia after its review of the prior process, took effect in September 1999. Id. The CMP documents the process by which SWBT will notify CLECs of new interfaces and changes to existing OSS interfaces, and provides for the identification and resolution of CLECs' concerns regarding SWBT's interfaces. SWBT notifies CLECs of these

changes via Accessible Letters.<sup>10</sup> The CMP applies across all five states served by SWBT, and includes all electronic interfaces (other than SWBT's own retail interfaces) used by CLECs for their end-user-related pre-ordering, ordering, provisioning, and maintenance and repair. Id.

¶ 308.<sup>11</sup> Separate CMP procedures apply for gateway applications that require systems development by both SWBT and CLECs, and for SWBT-proprietary graphical user interfaces that require development work only by SWBT. Ham Aff. ¶¶ 309-310, 317. A copy of the CMP is provided as Attachment JJ to the Affidavit of Elizabeth Ham.

The CMP provisions governing gateway applications, for example, establish SWBT's and CLECs' respective responsibilities, and set out specific procedures and time frames, with respect to: a one-year advance forecast of planned enhancements; six months' notice of specific changes; responses to CLECs' requests for clarification; release requirements; and testing schedules. Id. ¶ 310. There are rules to ensure SWBT's adherence to notification deadlines. Id. ¶ 311. Other CMP provisions address CLECs' recommendations for interface changes, emergency situations, exceptions to the CMP, training, and joint testing by SWBT and CLECs. Id. ¶ 318. In addition, the CMP establishes voting procedures for dispute resolution. Id. ¶¶ 345-351. SWBT has established a Change Management Team and internal guidelines to ensure that

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<sup>10</sup> SWBT notifies CLECs of all important developments relating to SWBT's systems through this method. Accessible Letters issued by SWBT since January 5, 1998 can be found in Appendix G to this Application.

<sup>11</sup> SBC is working with CLECs to extend the SWBT CMP (with negotiated modifications) to California, Connecticut, and Nevada. Ham Aff. ¶ 281. In addition, pursuant to the conditions imposed on its merger with Ameritech, SBC currently is negotiating the terms of a change management program covering all 13 states where SBC's incumbent LECs operate. Id. ¶ 281 n.22.



standard methods and procedures are followed throughout the change management process. Id. ¶¶ 320-329.

Independent evaluations of two separate OSS system “releases” have confirmed SWBT’s adherence to its change management processes. As part of the Texas PUC’s OSS testing, Telcordia validated the functionality of SWBT’s May 1999 EDI release and observed implementation of a subsequent August 1999 enhancement; Telcordia also validated SWBT’s implementation of change management processes during the October 1999 EDI release. Ham Aff. ¶¶ 312, 314-315, 332-333, 336-337, 342-343. Telcordia found that SWBT’s change management process was effective and that SWBT personnel were knowledgeable, helpful, and focused on meeting the business needs of CLECs. Id. ¶ 325. Although Telcordia identified some departures from proper procedures, these did not undermine the change management process. Id. ¶ 302. (As noted above, moreover, Telcordia’s recommended process improvements were incorporated into SWBT’s current CMP.)

At the Texas PUC’s direction, Telcordia also did a “follow-up” evaluation, involving validation of SWBT’s adherence to the CMP during an October 23, 1999 release that included changes to SWBT’s EDI. Again, Telcordia found that SWBT generally followed the CMP and made only minor documentation and procedural recommendations that SWBT has implemented. Ham Aff. ¶ 315. This independent third-party review of two successive OSS interface releases demonstrates that SWBT “has already established a pattern of compliance with the relevant notification and documentation intervals.” New York Order ¶ 114.<sup>12</sup>

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<sup>12</sup> Although performance measures were established for Bell Atlantic’s change management process in New York, no CLEC suggested during the course of development of the CMP that such measures would add any additional protections to those already present in the SWBT plan.

There is, moreover, a built-in safeguard against departures from CMP procedures that would harm CLECs. A singular provision of the CMP, implemented at the CLECs' suggestion, is the "go/no go" vote that gives a majority of interested CLECs, after discussion of their concerns, the ability to postpone a SWBT release. Ham Aff. ¶¶ 345-351. The go/no go vote ensures that if CLECs are not prepared for a release because of departures from the CMP or other reasons, the release will not go forward against their will. AT&T called for a go/no go vote with respect to the August 1999 EDI release, but joined all other participating CLECs in voting to go ahead with the release. Id. ¶ 350. The October 1999 release proceeded under the updated CMP without a call by any CLEC for a vote. Id. ¶ 351.

The CMP ensures CLECs a full opportunity to test new releases. See New York Order ¶¶ 119-122. Joint acceptance testing allows CLECs to verify that new SWBT systems are operating in accordance with their specifications and are ready for commercial use. Ham Aff. ¶¶ 338-344. Telcordia favorably reviewed SWBT's joint testing program, and the Texas PUC has reviewed and approved SWBT's joint testing procedures. Id. ¶¶ 342-344. SWBT introduced a new test environment in November 1999, which the Texas PUC has requested that Telcordia validate in early 2000. See id. ¶ 344. The only significant difference between this new environment and the previously validated environment is that it is to be used as a "sole CLEC test environment." Id.

The CMP also contains rules for "versioning" new releases of SWBT's EDI and Common Object Request Broker Architecture ("CORBA") pre-ordering interfaces and EDI ordering interface. These rules provide that the most recent prior release will be maintained in service after a new release, thus allowing CLECs to transition to the newest release at their own pace (or, alternatively, wait to transition to the subsequent release). Id. ¶¶ 352-354. SWBT

adopted this versioning policy in response to CLECs' requests during change management meetings, in advance of industry standards. Id. ¶ 352.

**C. SWBT Exceeds the 1996 Act's Requirements in Offering CLECs Access to Pre-Combined Network Elements**

Providing service over combinations of the incumbent LEC's UNEs, the Commission has said, "provides a competitor with the incentive and ability to package and market services in ways that differ from the BOCs' existing service offerings in order to compete in the local telecommunications market." Id. Moreover, "combining the incumbent's unbundled network elements with their own facilities encourages facilities-based competition and allows competing providers to provide a wide array of competitive choices." New York Order ¶ 230. SWBT satisfies checklist item (ii), 47 U.S.C. § 271(c)(2)(B)(ii), in part by affording CLECs a full and nondiscriminatory opportunity to employ any of these entry strategies.

Once again, CLECs in Texas have seized on the opportunities afforded by SWBT. For example, SWBT has provisioned more than 166,000 unbundled local loops, each of which represents at least one customer line served by a CLEC on a facilities basis. Habeeb Aff. Attach. E. Of these 166,000 loops, more than 40,000 have been provisioned to CLECs on a stand-alone basis, for combination with the CLECs' own switching and other facilities. Id. More than 125,000 have been provisioned with unbundled switching as part of a pre-assembled UNE Platform (i.e., use of SWBT's end-to-end local network to serve a particular line, at cost-based UNE rates). Id.

SWBT's terms for access to UNEs are more generous than the law requires. As discussed below, the Texas 271 Agreement obligates SWBT to assemble previously uncombined network elements for CLECs, even though the courts vacated the Commission's attempt to impose such a requirement. Moreover, although the Supreme Court vacated the